

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1307

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

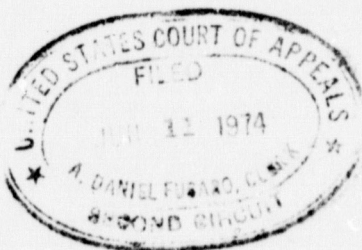
JOSE RODRIGUEZ BAEZA,

Appellant.

Docket No. 74-1307

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
FEDERAL DEFENDER SERVICES UNIT
606 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

E. THOMAS BOYLE,
Of Counsel

PAGINATION AS IN ORIGINAL COPY

JUDGE GRIESA

73 CRIM. 994

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	W. Cullen MacDonald, AUSA
ENJAMIN RODRIGUEZ, a/k/a Benny One-Eye 1&2 ✓	264-6427
ANTHONY STANZIONE 1&2	
ANTONIO BORREGO-Vidal 1&2	
MANUEL UZIEL 1&2	
LUIS GOMEZ ORTEGA-1-3	For Defendant:
JOSE RODRIGUEZ BAEZA 1&2 ✓	
WILLIAM SHERMAN TERRELL, a/k/a Goldfinger 1&2 ✓	
JOCH ORSINI 1&2	
JOHN DOE, a/k/a El Gallego 1&2	

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
07)					
ine,					
ierk,					
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ttorney,					
XXXXXXXXXXXX T21					
XXXXXXXXXXXX 846,848,841(a)(1)					
(1)(A).Consp. to violate Narcotic					
aws of the U.S.(Ct1).Distr.& possess.					
intent to distr.HeroinI. (Ct2) Narcotic					
riminal enterprise.(Ct3)			(Three Counts)		

DATE	PROCEEDINGS
9-73	Filed indictment. (assigned to Judge Griesa as related matter) Case related to 73Cr713 and 73 Cr 978).
10-73	Jose Rodriguez Baeza-Filed affidavit and notice of motion for an order to suppress, sever, discovery and inspection. Manuel Uziel
10-73	Filed affidavit and notice of motion for an order to sever, discovery and inspection.
11-2-73	Filed affdvt in opposition to motion to dismiss. ONLY COPY AVAILABLE
12-73	ANTHONY STANZIONE - Filed Information ; Section 849 of Title 21.

DATE	PROCEEDINGS	CLERK'S FEES			
		PLAINTIFF		DEFENDANT	
11-2-73	Motion for severance by defts' Uziel, Baeza and Ortega denied. Motion for severance by deft. Stanzione Dec. Res. Griesa, J.				
11-7-73	Baeza-Filed memo. endorsed on deft's motion filed 10/30/73 " Disposed of Items 2 & 3 as per record of hearing 11/2/73. Item 1 deferred to trial. Griesa, J. (mailed notice)				
	Uziel-Filed memo. endorsed on deft's motion filed 10/30/73 "Motion denied. So ordered. Griesa, J. (M/N)				
11-7-73	Ortega- Filed affidavit and notice of motion filed 10-30-73 for severance, double jeopardy, Collateral estoppel and selective prosecution.				
11-7-73	Ortega- Filed memo. endorsed on deft's motion filed 10-30-73. " Item (a) of motion denied. Items(b)(c) & (d) deferred as to record of hearing Nov. 2, 1973. So ordered. Griesa, J. (m/n)				
11-8-73	JOSE RODRIGUES BAEZA - Filed Order. ORDERED that subpoena be issued for all records relating to the acct of deft., and subpoena be served without prepayment of costs & fees. GRIESA, J.				
11-9-73	JOSE R. BAEZA - Filed CJA Form # 21, Authorization and voucher for interpreter fees. GRIESA, J.				
11-16-73	JOSE RODRIGUEZ BAEZA - Filed Order. Deft. is to reside at Community Treatment Center as condition of his remaining at liberty on bail. GRIESA, J.				
11-27-73	MANUEL UZIEL - Filed CJA Form # 21 - authorization for transcript.				
11-27-73	GEORGE W. PEREZ - Filed CJA Form # 21 - authorisation for transcript.				
12-6-73	WILLIAM S. TERRELL - Filed deft. memo of law in support of motion for judgment of acquittal.				

Cont'd on page 3

DATE	PROCEEDINGS
12-13-73	WILLIAM S. TERRELL - Filed defts. requests to charge.
12-18-73	Filed Govt'd. requests to charge.
11-9-73	Deft. ORTEGA - motion for severance - Granted. GRIESA, J.
11-12-73	Deft. STANZIONE - motion to suppress - Denied. GRIESA, J.
11-13-73	Defts. RODRIGUEZ, STANZIONE UZIEL BAEZA AND TERRELL - PLEAD NOT GUILTY.
-13-73	Jury Trial begun before GRIESA, J. as to defts. RODRIGUEZ, STANZIONE, UZIEL, BAEZA AND TERRELL.
11-14-73	Trial cont'd.
11-15-73	Trial cont'd. Deft. STANZIONE motion for mistrial denied.
11-16-73	Trial Cont'd.
11-19-73	Trial Cont'd. Deft. RODRIGUEZ motion for mistrial denied.
11-20-73	Trial Cont'd.
11-21-73	Trial Cont'd.
11-26-73	Trial Cont'd.
11-27-73	Trial Cont'd.
11-28-73	Trial Cont'd.
11-29-73	Trial Cont'd. Deft. BAEZA motion to suppress granted.
11-30-73	Trial Cont'd.
12-3-73	Trial Cont'd. Deft. RODRIGUEZ motion for acquittal denied on ct.1 Dec. Res. ct.2. DEFT. STANZIONE motion for acquittal denied on ct 1 , Dec.Res. ct.2.
12-4-73	Trial Cont'd.
12-5-73	Trial Cont'd. Defts. RODRIGUEZ & STANZIONE motion to dismiss ct.2 denied. BAEZA motion to dismiss ct. 2 Granted.
12-6-73	Trial Cont'd.
12-10-73	Trial Cont'd.
12-11-73	Trial Cont'd.
12-12-73	Trial Cont'd.
12-13-73	Trial Cont'd.
12-14-73	Trial Cont'd. RODRIGUEZ - NOT GUILTY , TERRELL - NOT GUILTY. BAEZA - GUILTY on Count 1.

Cont'd. on page 4

DATE	PROCEEDINGS
12-15-73	Trial Cont'd.
12-17-73	Trial Cont'd.
12-18-73	Trial Cont'd.
12-18-73	Trial Cont'd and Concluded. Jury dead locked as to defts. STANZIONE & UZIEL, Motion for mistrial as to defts. STANZIONE & UZIEL - Granted. GRIESA, J.
1-7-74	BENJAMIN RODRIGUEZ - Filed CJA # 21- Authorization for transcripts. GRIESA, J.
1-7-74	MANUEL UZIEL- Filed affdvt. & notice of motion severing the "Third Count" of the indictment and for a separate trial thereon and to sever said deft. from the other defts. and granting a separate trial- ret. 1-11-74.
1-8-74	Filed Govt's. memo of law.
1-8-74	Filed Govt's. memo of law.
1-9-74	Filed Govt's. affdvt. in opposition to deft. UZIEL motion for severance.
1-15-74	BENJAMIN RODRIGUEZ - Filed CJA Form # 21. Authorization for interpreter fees. GRIESA, J.
1-24-74	JOSE R. BAEZA - Filed affdvt. and notice of motion for new trial. Ret. 2-1-74.
1-24-74	MANUEL UZIEL - Filed MEMO END on deft. motion to sever. Motions denied, as recorded in minutes of hearing 1-22-74. GRIESA, J.
1-24-74	LUIS ORTEGA - Filed notice of motion to dismiss indictment and MEMO END. Motion denied, as recorded in minutes of hearing 1-22-74. So Ordered. GRIESA, J.
1-24-74	XXXXXXXXXX FILED affdvt. of COONEY, AUSA for W/H/C/ ad pros.
1-31-74	ANTONIO BORREGO VIDAL.- Filed Notice of appearance by Oscar A. White, 209 East. Flagler St., Miami, Fla. (358-1153)
2-1-74	JOSE R. BAEZA - Sentence adj'd. until Mar. 1- 74 at 10 a.m. P.S.I. Ordered. Deft. remanded. GRIESA, J.
2-11-74	ANTONIO BORREGO VIDAL - Filed notice of motion Re: petition to discharge bond.
2-11-74	LUIS ORTEGA - Filed defts. demand for B/P.
2-11-74	ANTONIO B. VIDAL - Deft. NOT PRESENT - Court enters plea of not guilty. Trial date set for 3-4-74 at 10; a.m. GRIESA, J.
2-11-74	ANTONIO B. VIDAL - Filed the following papers received from U.S. Magistrate: Docket Entry Sheet, Indictment Warrant and Disposition Sheet.
2-14-74	Docketed transcript of record of proceedings dated 11-8-73 and filed 1-31-74.
	Cont'd on page 5

DATE	PROCEEDINGS
2-14-74	Filed Govt's affdvt in opposition to deft. ORTEGA to proceed in forma pauperis.
2-14-74	Filed Govt's. memo of law.
2-15-74	VICTOR EUPHEMIA - Filed W/H/C Ad Test, Writ issued and ret. 2-22-74.
2-15-74	JOSEPH RAGUSA - Filed W/H/C Ad Test, Writ issued and ret. 2-25-74.
2-19-74	STANZIONE, VIDAL, VZIEL & ORTEGA - Trial set for 5-6-74 at 10 a.m. GRIESA, J.
2-21-74	ANTONIO BORREGO VIDAL - Filed affdvt. and motion for severance.
2-26-74	VICTOR EUPHEMIA - Filed affdvt. for W/H/C Ad Test. Ret. 3-12-74.
2-26-74	JOSE R. BAEZA- Filed MEMO END on defts. motion filed 1-24-74. Motion denied. See minutes 2-25-74. So Ordered. GRIESA, J.
3-5-74 *	JOSE R. BAEZA- Filed notice of appeal from judgment rendered of March 4-74. m/n Leave to appeal in forma pauperis is granted-Griesa J.
3-6-74	
3-6-74	Jose Baeza - Filed CJA Form # 21, authorization and voucher for Joaquin R. Guma in the amt. of \$108.00. GRIESA, J.
3-6-74	B. RODRIGUEZ - Filed CJA Form # 21, Authorization and voucher for M.E. Cardenas, in the amt. of \$36.00. GRIESA, J.
2-27-74---	GORDON H. MCGILLUM--Deft.(Atty Present)-Filed Judgment-#-----and --issued copies; --It is Adjudged that the deft. is to be FINED \$10,000. on each of cts: 1, 16, 17, 6-34. Non-committed fine totaling \$40,000. shall be paid on or before 5 p.m. March 12, 1974. Cts: 2 thru 15, 18 thru 33, 35 thru 55 and 58 thru 61 that is, all remaining cts. against said deft. are dismissed upon motion by defts. counsel with consent of the Govt. GRIESA, J. error see 72 Cr. 1356.
2-27-74---	GLENN R. MILLER-Deft.(Atty Present)-Filed Judgment-#-----and issued --copies; --It is Adjudged that the deft. is to be fined \$10,000. on each of cts: 1, 16, 17, 6-34. Non-committed fine totaling \$40,000. shall be paid on or before 5 p.m. 3-12-74. Cts: 2 thru 15, 18 thru 33 & 35 thru 55 that is all cts. against said deft. are dismissed upon motion by defts. counsel with consent of the Govt. GRIESA, J. Error see 72 Cr. 1356.
-4-74	JOSE R. BAEZA - Deft.(Atty. Present) Filed Judgment and commitment and issued copies. It Is Adjudged that the deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of SEVED (7) Years. GRIESA, J.
3-14-74	B. RODRIGUEZ - Filed CJA Form # 21, authorization and voucher for interpreter M.E. Cardenas in the amt. of \$144. GRIESA, J.
3-21-74	B. RODRIGUEZ - Filed CJA Form # 21, authorization and voucher for Transcript. GRIESA, J.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

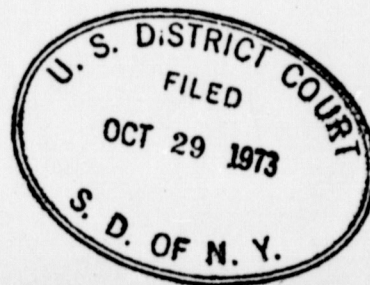
BENJAMIN RODRIGUEZ, a/k/a
Benny One-Eye,
ANTHONY STANZIONE,
ANTONIO BORREGO VIDAL,
MANUEL UZIEL,
LUIS GOMEZ ORTEGA,
JOSE RODRIGUEZ BAEZA,
WILLIAM SHERMAN TERRELL, a/k/a
Goldfinger,
ROCH ORSINI and
JOHN DOE, a/k/a "El Gallego",

Defendants.

"S" 73 CRIM. 994

INDICTMENT

S 73 Cr. (TPG)



COUNT ONE

The Grand Jury charges:

From on or about the 1st day of November, 1968, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere, BENJAMIN RODRIGUEZ, a/k/a Benny One-Eye, ANTHONY STANZIONE, ANTONIO BORREGO VIDAL, MANUEL UZIEL, JOSE RODRIGUEZ BAEZA, WILLIAM SHERMAN TERRELL, a/k/a Goldfinger, ROCH ORSINI and JOHN DOE, a/k/a "El Gallego", the defendants, and Luis Gomez Ortega, Jean Orsini, a/k/a Jean Pierre Andre Huguen and George Warren Perez, named in this Count as co-conspirators but not as defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly combined conspired, confederated and agreed together and with each other to violate, prior to May 1, 1971, Section 1403 of Title 18, United States Code, Sections 173 and 174 of Title 21, United States Code, and Sections 4701, 4703, 4704, 4771 and 7237 of Title 26, United States Code, and, on and after May 1, 1971, to violate Sections 812, 828, 841(a)(1), 841(b)(1)(A), 843, 951, 952, 955, 959 and 960 of Title 21, United States Code.

2. It was part of said conspiracy that prior to May 1, 1971 the said defendants unlawfully, wilfully, knowingly and fraudulently would import and bring into the United States large amounts of narcotic drugs from and through France, Mexico and other countries to the Grand Jury unknown in violation of Sections 173 and 174 of Title 21, and sections 4701, 4703-4, 4771 and 7237 of Title 26, United States Code.

3. It was further a part of said conspiracy that prior to May 1, 1971 the said defendants unlawfully, wilfully and knowingly would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a quantity of narcotic drugs, the exact amount and nature thereof being to the Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, and Sections 4701, 4703-4, 4771 and 7237 of Title 26, United States Code.

4. It was further a part of said conspiracy that on and after May 1, 1971, the said defendants unlawfully, wilfully and knowingly would import into the United States from a place outside thereof Schedules I and II narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 951(a)(1), 952, 955 and 959-960 of Title 21, United States Code.

5. It was further a part of said conspiracy that on and after May 1, 1971 the said defendants unlawfully, wilfully and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown, and not pursuant to written order, all in violation of Sections 812, 828, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

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6. It was further a part of said conspiracy that the said defendants unlawfully, wilfully, knowingly and intentionally would use a communication facility, to wit, the telephone, in committing and in causing and facilitating the commission of said conspiracy in violation of , prior to May 1, 1971, Section 1403 of Title 18, United States Code and, afterwards, Section 843(b) of Title 21, United States Code.

OVERT ACTS

In pursuance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. In or about April, 1969, the defendant JOSE RODRIGUEZ BAEZA and co-conspirator Luis Gomez Ortega delivered approximately \$240,000.00 to co-conspirator George Warren Perez.

2. In or about September, 1969, defendant JOSE RODRIGUEZ BAEZA left New York City for Geneva, Switzerland.

3. In or about March, 1970, defendant BENJAMIN RODRIGUEZ rented a house in Belmar, New Jersey.

4. In or about August, 1970, defendants ANTONIO BORREGO VIDAL and JOHN DOE, a/k/a El Gallego met with defendant ANTHONY STANZIONE.

5. In or about November, 1970, co-conspirator Jean Orsini, a/k/a Jean Pierre Andre Huguen and the defendant ROCH ORSINI traveled from New York City to New Jersey.

6. On or about March 12, 1971, defendant MANUEL UZIEL and co-conspirator George Warren Perez rented a garage in Newark, New Jersey.

7. In or about June, 1971, defendant BENJAMIN RODRIGUEZ, a/k/a Benny One-Eye, met with co-conspirator Luis Gomez Ortega.

8. In or about June, 1971, co-conspirator Luis Gomez Ortega telephoned defendant ANTHONY STANZIONE.

9. On or about July 12, 1971, defendant ANTHONY STANZIONE went to the vicinity of 1840 Loring Place, Bronx, New York.

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10. On or about July 21, 1971, co-conspirator Luis Gomez Ortega withdrew approximately \$500,000.00 from the First National Bank of Fort Lee, Fort Lee, New Jersey.

11. On or about September 17, 1971, defendant MANUEL UZIEL went to the vicinity of 992 Amsterdam Avenue, New York, New York.

12. On or about September 19, 1971, the co-conspirators Luis Gomez Ortega, Jean Orsini and George Warren Perez went to the vicinity of Madison Square Garden, New York, New York.

13. On or about September 23, 1971, defendant ANTONIO BORREGO VIDAL withdrew approximately \$500,000.00 from the First National Bank of Fort Lee, Fort Lee, New Jersey.

(Title 21, United States Code, Sections
173, 174, 846 and 963.)

SECOND COUNT

The Grand Jury further charges:

On or about the 19th day of September, 1971, in the Southern District of New York, BENJAMIN RODRIGUEZ, a/k/a Benny One-Eye, ANTHONY STANZIONE, ANTONIO BORREGO VIDAL, MANUEL UZIEL, JOSE RODRIGUEZ BAEZA, WILLIAM SHERMAN TERRELL, a/k/a Goldfinger, ROCH ORSINI and JOHN DOE, a/k/a "El Gallego", the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 516 grams of heroin hydrochloride.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

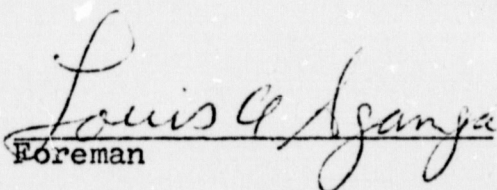
THIRD COUNT

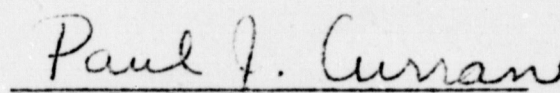
The Grand Jury further charges:

From on or about the 1st day of May, 1971, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of

New York, LUIS GOMEZ ORTEGA, named in this Count as the defendant, unlawfully, wilfully, intentionally and knowingly did engage in a continuing criminal enterprise in that he unlawfully, wilfully, intentionally and knowingly did violate Title 21, United States Code, Sections 812, 828, 841(a)(1), 841(b)(1)(A), 843, 846, 951, 952, 955, 959 and 960 as alleged in Counts One and Two of this indictment, incorporated by reference herein, which violations were a part of a continuing series of violations of said statutes undertaken in concert with at least five other persons with respect to whom LUIS GOMEZ ORTEGA, occupied a position of organizer, supervisor and manager and from which continuing series of violations, he obtained substantial income and resources.

(Title 21, United States Code, Section 848.)


Foreman


PAUL J. CURRAN
United States Attorney

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

BENJAMIN RODRIGUEZ, a/k/a Benny
One-Eye, et al.,

Defendants.

INDICTMENT

S 73 Cr.

(21, U.S.C. §§ 812, 846, 841(a)(1),
841(b)(1)(A) and 848.)

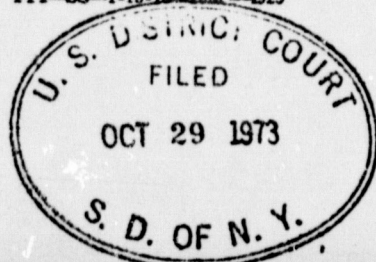
PAUL J. CURRAN

United States Attorney

A TRUE BILL

Foreman

FPI-SS-1-13-70-20M-4923



Nov 2, 1973 Motion for Severance by Def'ts Viziel, Balza
and Ortega - Denied Motion for Severance by Def't
Stanzione - Decision Reserved.

Griesa, J. AD

Nov 9, 1973 Def't Ortega's Motion for Severance - Grant
Griesa, J.

Nov 12 1973 Def't Stanzione (Att. Nancy Pomeroy) Present.
Def't's motion to suppress portions of taped
Conversations (Gov't & G-1) is Denied.

Nov 13, 1973 - Def'ts Rodriguez, Stanzione, Viziel, Griesa, J.
Balza and Terrell filed NOT guilty.

NOV 13 1973 Jury Trial begun as to Def'ts Rodriguez
Stanzione, Viziel, Balza and Terrell.

NOV 14 1973 Trial continued

NOV 15 1973 Trial continued - Def't Stanzione app for mistrial

NOV 16 1973 Trial continued

NOV 19 1973 - Trial continued - Def't Rodriguez app. for mistrial
Denied

NOV 20 1973 - Trial continued

NOV 21 1973 - Trial Continued

NOV 26 1973 - Trial Continued

NOV 27 1973 - Trial Continued

NOV 28 1973 - Trial Continued

NOV 29 1973 - Trial Continued

NOV 29 1973 - Trial Continued - Def't Balza motion to suppress

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FEB 1 1974 Def't Baeza (att present) Sentence adj to March 1 10:30 AM
Presentence report ordered. Def't remanded.

Feb 11, 1974 Def't VIDAL NOT ^(ATT's Present) Present Court enters plea of NOT Guilty.
TRIAL Date Mar 4, 1974 10 AM.

Muesu, J. RH

FEB 19 1974 Trial as to Def'ts STANZIO, Vidal, Uziel and Ortega
set for May 6, 1974 10 AM

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FEB 25 1974

Def't Baeza (att. Present) Interpreter Jack Yuma

Def't's Motion to set aside jury verdict and to be granted
a new Trial - Denied. Def't to be sentenced Mar. 1, 1974
10:30 AM. Def't. is incarcerated.

Griesa, J.

MAR 4 1974

d Def't Baeza (att present) is sentenced to a term of
imprisonment for Seven (7) years. RT

Griesa, J.

SKIPPED 54 PAGE NUMBERS AS PER INSTRUCTIONS

1 WC 2 (In open court; jury present)

2 THE COURT: Good morning, ladies and gentlemen.
3 I am about to instruct you on the law and about your con-
4 siderations of the case, but let me first express my thanks
5 to the lawyers. Each lawyer who has participated in this
6 case has represented his client with great ability. Each
7 lawyer has done it in his individual way, his individual
8 manner, but it has all been accomplished with a very high
9 level of professional ability. I am grateful to you; I know
10 the jury is.

11 Of course, to you ladies and gentlemen of the
12 jury it has been a hard job attending and participating in
13 this case. Appearances can indicate a lot, and your careful
14 attention has indicated certainly to all of us the great
15 diligence that you have exercised in this work.

16 As far as my charge to you is concerned, I want
17 to say two preliminary words of explanation. One is that I
18 will necessarily read this charge. I have always felt that
19 someone reading a long document -- I hope it isn't too
20 long -- can get tiresome; we would all rather speak directly
21 and spontaneously. But a charge is enough of a technical
22 thing that I am really not able to do that. So, by and large,
23 I will read the charge. But I am going to ask you, despite
24 this fact, to pay as close attention as you possibly can,
25 and do not allow your minds to wander or do not be bothered

by my reading versus spontaneous talking to you.

Secondly, much of this charge will be stated in somewhat abstract or general terms, rules of law, general considerations, and so forth. In a sense that may be frustrating, because it will not be pinned down very much to the specific facts of this case. It will be in large part stated in general terms. Generalities can be a little frustrating. But it is your job to apply the rules and general considerations to this case. It is not my job. This falls on your shoulders. I know that you are ready, willing and able to take that responsibility. So pay close attention get everything you possibly can get out of this charge, and remember as you listen to it that these are rules and general considerations and that in a very few minutes you will be having to apply these general rules to the facts of the case.

As has already been indicated, you, the jury, are about to enter upon your final functions in the case. You are performing a very sacred obligation of citizenship in sitting in on this case. As I said at the beginning of the trial, you are to perform this function in an attitude of complete fairness, impartiality, without the slightest bias or prejudice for or against the Government, for or against any defendant.

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This case is clearly of great importance to the Government, since the enforcement of the criminal laws of this country is a matter of high concern to the nation and to the community. At the same time this case is equally important to each defendant, because of the consequences of conviction for a serious crime. So what you are performing is a very important task to all sides.

The fact that the United States Government is a party to this action entitles it to no greater consideration than the consideration owed to a defendant. By the same token, the Government is entitled to no less consideration. In fact, both the Government and the defendants are equals in this court, which is a court of justice to all parties.

Your final role is to decide and pass upon the facts, the issues of fact. You, the jury, are the sole and exclusive judges of the facts. You pass upon the weight to be given to different parts of the evidence. You determine the credibility of the witnesses. You resolve the conflicts in the evidence.

In passing on the facts, you will draw reasonable inferences from one fact to another. And I will go into that a little later.

My function as the Court is to instruct you on the law, and it is your duty to accept those instructions on the

1 law whether you agree with them or not, and then it is your
2 duty to apply the rules of law to the evidence and arrive
3 at a verdict at the conclusion of your deliberations.
4

5 With respect to any matters of fact, it is your
6 recollection of the evidence that governs. Each of the
7 attorneys has given you his summation as to what he states
8 has been proved in the evidence. But the summations are not
9 in themselves evidence and are not to be substituted for
10 your recollection of the evidence.

11 Any remarks I may make about the evidence are
12 not in themselves the evidence. If your memory of the
13 evidence is different from what the attorneys have described
14 to you in their summations or what I may say to you in this
15 charge, it is your recollection that controls and governs.

16 As I described to you earlier -- and I am sure
17 you recognize clearly -- the evidence consists of the
18 testimony admitted into evidence, the exhibits, and any
19 stipulations which have been agreed upon.

20 The fact that rulings have been made by me during
21 the trial on procedural matters or on evidence matters or
22 on other matters of law, the fact that occasionally a
23 question may have been asked by me -- none of these things
24 should be taken in any way to indicate any view of mine as
25 to what your verdict should be. Nothing in these instructions

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2 should be taken by you as any indication of what your
3 verdict should be.

4 My role is to instruct you on the rules of law.
5 Your role is to find the facts and reach the ultimate
6 verdicts. Just as I know you respect my role, I thoroughly
7 respect yours and will not tread upon it.

8 I did not intend in my charge, as I have already
9 indicated, to attempt to sum up the evidence, except in a
10 very limited way in certain respects. The evidence has been
11 heard by you, the lawyers have summed up, and I do not intend
12 to make any summation or summary of my own. I believe it is
13 unnecessary and would not be of aid to you, and I won't do
14 it.

15 To the extent that I do refer to the evidence, it
16 is intended to illustrate to you the issues for you to
17 decide. It is not intended to substitute my judgment of
18 the facts in any way for yours.

19 Any rulings -- I think I have indicated this, but
20 let me repeat -- on motions or matters of procedure on
21 evidence involve rules of law which really are of no concern
22 to you at this point.

23 You will have a copy of the indictment in the
24 jury room during your deliberations. I will describe the
25 indictment in some detail in a moment, but first let me make

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2 this preliminary observation. The indictment names nine
3 persons as defendants. You will see those names in the
4 caption of the case and in the body of the indictment. One
5 of the counts in the indictment, the first count, charges a
6 conspiracy to violate the federal narcotics laws. All of the
7 nine defendants are named in the indictment as conspirators.
8 In addition, there are other persons besides those defendants
9 who are alleged to have been other co-conspirators.

10 The point I want to make now is that, out of
11 these nine defendants named in the indictment and other co-
12 conspirators referred to in the indictment, only five
13 defendants are on trial before you.

14 The question of whether or not to indict all of
15 the alleged co-conspirators in a case is a matter determined
16 by the grand jury and the United States Attorney's Office.
17 This question involves matters of law and other considerations
18 which are of no concern to you as jurors in this trial. You
19 are to draw no inference at all in favor of the defendants
20 here from the fact that other alleged co-conspirators have
21 not been indicted in this particular action.

22 Further, the question whether all persons named
23 as defendants in an indictment should be tried together in
24 the same trial or tried separately in separate trials is
25 determined by the Court. The fact that the indictment has

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2 been severed or separated and that only five of the nine
3 defendants are on trial in this case is not to enter into
4 your consideration or play any part in your deliberations.
5 You may draw no inferences at all, either for or against the
6 five defendants before you, from the fact that some of the
7 defendants, as to their trials, have been severed or
8 separated.

9 Now let me say something here which you must
10 keep uppermost in your minds. The matter of guilt or
11 innocence of each individual defendant before you is a
12 personal individual matter with respect to that defendant.
13 The innocence or guilt of each defendant before you must be
14 determined individually against that defendant, solely upon
15 the evidence presented against him or the lack of evidence
16 against him. The charges against an individual defendant
17 stand or fall upon the proof or lack of proof against him,
18 not the proof or lack of proof against a co-conspirator or
19 a co-defendant.

20 Let me put this more concretely. The Government
21 contends that there was a conspiracy to import and
22 distribute narcotics, and that this conspiracy centered
23 around Ortega and Perez. If you find that such a conspiracy
24 existed, you must go on to what are probably the crucial
25 issues to be decided in this case. You must determine as

1 to each defendant whether or not he became a participant
2 in such conspiracy. This is an individual issue as to each
3 defendant, and you must weigh the proof individually as to
4 each defendant.
5

6 I told you at the beginning of the trial and
7 I will repeat now: The indictment is merely an accusation,
8 it is a charge; it is no evidence or proof of guilt. No
9 weight whatever is to be given by you to the mere fact that
10 an indictment has been returned against these defendants.
11 It is the evidence in the trial that matters, and the
12 evidence alone.

13 Each of these defendants has pleaded not guilty,
14 which means that the Government has the burden of proving
15 the charges against each of them beyond a reasonable doubt.
16 A defendant does not have to prove his innocence. He is in
17 fact presumed to be innocent of the accusations contained in
18 the indictment. This presumption was in his favor at the
19 start of the trial, it is in his favor as I instruct you now,
20 and it remains in his favor during your deliberations in the
21 jury room. It is removed only if and when you are satisfied
22 that the Government has sustained its burden of proving the
23 guilt of the defendant beyond a reasonable doubt.

24 What do we mean by a reasonable doubt? Although
25 this is a legal term, it has really a commonsense meaning, but

1 maybe a little explanation will help. A reasonable doubt
2 is a doubt founded in reason, arising out of the evidence
3 or lack of evidence. It is a doubt which a reasonable person
4 has after carefully weighing all the evidence. It is a
5 doubt which appeals to your judgment, your common sense,
6 your experience. But all of this is in contrast to some
7 things which it is not. It is not caprice, whim, speculation,
8 mere suspicion. That is not a reasonable doubt. It is not
9 a capricious feeling, sympathy, a desire to avoid an un-
10 pleasant duty, mere personal feeling, that kind of thing.
11 Again, the key word is "reasonable."
12

13 If after a fair and impartial consideration of
14 all the evidence you say that you are not satisfied of the
15 guilt of a defendant, if you have a doubt which would cause
16 you as prudent persons to hesitate before acting in matters
17 of importance to yourselves, then you have a reasonable
18 doubt, and in that circumstance it is your duty to acquit, to
19 return a verdict of not guilty. On the other hand, if after
20 a consideration of all the evidence you candidly and
21 honestly say you do have an abiding conviction of a
22 defendant's guilt, such a conviction as you would be willing
23 to act upon in important matters in your own lives, then you
24 can say that you have no reasonable doubt and under those
25 circumstances it is your duty to convict.

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2 One final word on this subject. Proof beyond a
3 reasonable doubt does not mean proof to a positive certainty
4 or beyond all possible doubt. If that were the rule, few
5 persons, however guilty, would ever be convicted. It is
6 practically impossible for any of us to be absolutely and
7 completely convinced of any controverted fact unless it is
8 something in the realm of mathematics possibly.

9 So the law in a criminal case is that it is
10 sufficient if the guilt of a defendant is established beyond
11 a reasonable doubt but not beyond every possible doubt.

12 I have talked about what constitutes evidence
13 earlier, and at this point I think it may help you to just
14 remark on two kinds of evidence: direct evidence and
15 circumstantial evidence.

16 I know you have all heard the term "circumstantial
17 evidence." This is in some contrast to direct evidence.
18 Direct evidence means basically the testimony of an eye-
19 witness. Someone says that he saw something, he heard some-
20 thing, a document says that something was done. That is
21 direct evidence. What is circumstantial evidence? Circum-
22 stantial evidence is where one fact or perhaps a chain of
23 facts gives rise to a reasonable inference of another fact.

24 For instance, suppose I see three fire engines
25 converge on a building with sirens going, and then see the

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engines immediately leave after the firemen have made a brief inspection, it may be reasonable to infer that somebody turned in a false alarm, although I have not actually seen or observed the person do this.

If one fact or group of facts, on the basis of common experience, leads you logically and reasonably to infer other facts, then this is circumstantial evidence, and it is of no less value than direct evidence.

I wish you would stand up and stretch for a minute.

All right, we will go back to our work. Thank you.

Let me summarize for you the charges or counts in the indictment. The indictment contains two counts, which I will go into in a moment in some detail, but I want to summarize them briefly now. Count 1 charges a conspiracy to import narcotic drugs into the United States and to distribute these drugs in the United States following importation. This is the conspiracy count in the indictment. Count 2 charges that on September 19, 1971, certain defendants possessed with intent to distribute a quantity of heroin hydrochloride.

Count 2 is called a substantive count, as distinct from a conspiracy count. Let me describe to you the distinction between the concept of conspiracy involved in

Count 1 and the concept of substantive offense involved in Count 2.

The essence of the crime of conspiracy is an agreement -- an agreement to seek some unlawful objective. Since the agreement is the essential matter in the crime of conspiracy, there may be a conspiracy even though the objective of the conspiracy is never accomplished or completed. The distinction between conspiracy and substantive crime may be shown by some illustrations which have nothing at all to do with the facts of this case.

Let us suppose that one man alone robs a bank. He has committed what we call the substantive crime: a bank robbery. Now let us suppose that three men agree to rob a bank, and then actually carry out the robbery. These men may have committed two separate crimes: the crime of conspiracy and the substantive crime of robbery.

Finally, let us suppose that the three men agree to rob the bank, take one or more steps to accomplish this, but never actually reach the point of carrying out the robbery. In this case the three men may have committed the crime of conspiracy, although not the substantive crime.

A conspiracy, which is sometimes referred to as a partnership in crime because it involves collective or organized action, presents a greater potential threat to the

1 public interest than the illegal activity of a single
2 individual. Group association or organized activity renders
3 detection more difficult than the instance of a single or
4 lone wrongdoer. It is for these reasons and others that the
5 Congress has made conspiracy or concerted action to violate
6 a general law a separate crime, entirely separate and
7 distinct from the violation of the specific laws which may be
8 the objective of the conspiracy.
9

10 Let me now say a few words about the statutes
11 referred to in the indictment. In this court the only
12 crimes tried are what we call federal crimes, crimes defined
13 by statutes passed by the Congress. The charges made
14 against these defendants are under certain specific laws
15 passed by Congress. You will see in the indictment references
16 to statutory provisions by numbers-- in fact, several
17 statutory provisions. Please do not worry about what may
18 seem complicated-looking statutory numbers. The essential
19 parts of those statutory provisions are summarized in plain
20 English in the paragraphs of the indictment which you will
21 have to read.

22 In connection with the first count, the conspiracy
23 count, I must call your attention to the fact that the law
24 was changed by the Congress during the period of the alleged
25 conspiracy, but in reality I do not think this will turn out

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2 to be the cause of any confusion. I must explain it to
3 you, but I don't think in the end it will cause you the
4 slightest confusion.

5 Count 1 charges a conspiracy between 1968 and the
6 time of the indictment in October 1973. One set of federal
7 laws on the subject of narcotics was in force for some
8 years, ending May 1, 1971. The federal narcotics laws were
9 changed in some regards effective May 1, 1971, which is during
10 the time of the alleged conspiracy, running from 1968 through
11 1973, as alleged.

12 What had occurred was that over a period of many
13 years, commencing about 1914, Congress had passed more than
14 fifty pieces of legislation relating to narcotics and
15 dangerous drugs. There was some confusion, some duplication,
16 as a result of all these laws.

17 In 1970 Congress decided to replace all or most
18 of these existing laws with a comprehensive single piece of
19 legislation. Congress passed what is known as the Comprehen-
20 sive Drug Abuse Prevention and Control Act of 1970. That
21 legislation became effective on May 1, 1971.

22 For the purposes of the indictment, when it came
23 to charging the alleged illegal conduct which occurred before
24 May 1, 1971, the grand jury necessarily charged under the old
25

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1 law. Consequently, paragraphs 2 and 3 of Count 1 of the
2 indictment, which you will see, refer to the old law. When
3 it came to charging with respect to the alleged illegal
4 conduct occurring after May 1, 1971, the grand jury
5 necessarily charged under the new law. Consequently, para-
6 graphs 4 and 5 refer to the new law, as you will see.

7 But the important thing for you to realize now
8 is that for the sake of your deliberations there are no
9 differences -- there are no differences -- between the old
10 law and the new law which you need to worry about.

11 In other words, I need to explain this to you,
12 because you will see the references in the indictment, but
13 my explanation takes the form of telling you, and I will
14 elaborate on this a little more in a moment, that there are
15 really no differences in the elements of the crimes which
16 you need to be concerned with.

17 I think this will appear from what I say now.
18 The essential provisions of the old law in effect before
19 May 1, 1971, were as follows:

20 (1) It was illegal to import narcotic drugs,
21 including heroin and cocaine, into the United States from a
22 foreign country.-- illegal to import narcotic drugs,
23 including heroin and cocaine, into the United States from a
24 foreign country.
25

(2) It was illegal to sell or receive for resale narcotic drugs after such drugs had been imported with knowledge that the drugs had been illegally imported. Again: It was illegal to sell or receive for resale imported narcotic drugs with knowledge that they had been illegally imported.

As to the new law, let me say that one thing Congress did was to classify narcotics and other so-called controlled substances according to their potential dangers and deal with them accordingly. That is why you will see in the indictment reference to what are called Schedule I and Schedule II narcotic drug controlled substances. But, again, these are classifications which for our case don't really offer any complications. Whenever you see Schedule I, substitute heroin, because heroin is in Schedule I. Whenever you see Schedule II, you may simply substitute cocaine, because cocaine is in Schedule II. It is as simple as that.

Again, for the sake of this indictment, we are talking about heroin and cocaine.

I told you a moment ago the essential provisions of the old law. It is illegal to import heroin and cocaine. It is illegal to sell or distribute it after importation with knowledge of the illegal importation.

Here are the essential provisions of the new law

2 in effect after May 1, 1971. First, again, it is unlawful
3 to import into the United States from a foreign country--
4 they refer to them as Schedule I and Schedule II narcotic
5 drug controlled substances, but this simply means heroin and
6 cocaine. Second, it is unlawful to distribute or possess
7 with intent to distribute heroin and cocaine.

8 So from my description of the essential elements
9 of the old law and the new law, I think you can see that it
10 was illegal before and it is still illegal to do the same
11 basic two things: (1) It is illegal to import heroin and
12 cocaine into the United States from foreign countries, and
13 (2) it is illegal to knowingly sell or distribute or
14 possess with intent to sell or distribute the imported
15 heroin or cocaine, knowing the same to be illegally imported
16 into the United States. The same two basic elements.

17 Let me also mention another law which is referred
18 to in paragraph 6 of the first count. Both under the old
19 law and the new law it was illegal to use a communication
20 facility, including a telephone, in an unlawful conspiracy
21 to import or sell heroin or cocaine.

22 With that introduction, let us look more closely
23 at the specific charges in the indictment. I am going to
24 read Count 1 of the indictment. You will have the indictment
25 with you in your deliberations, and certainly neither now

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2 nor then are you required to memorize what is in the
3 indictment. But I would like to read you the language of
4 the indictment by way of introduction and background, so you
5 have it right now.

6 The first count of the indictment reads as
7 follows, and I am going to read it in two stages:

8 "First: From on or about the 1st day of
9 November, 1968, and continuously thereafter up to and
10 including the date of the filing of this indictment" --
11 which was October 26, 1973 -- "in the Southern District of
12 New York, and elsewhere, Benjamin Rodriguez, Anthony
13 Stanzione, Antonio Borrego Vidal, Manuel Uziel, Luis Gomez
14 Ortega, Jose Rodriguez Baeza, William Sherman Terrell, Jean
15 Orsini, also known as Jean Pierre Andre Huguen, Roch Orsini,
16 and John Doe, also known as 'El Gallego,' the defendants,
17 and George Warren Perez, named herein as a co-conspirator
18 but not as a defendant, and others to the grand jury known
19 and unknown, unlawfully, wilfully and knowingly combined,
20 conspired, confederated and agreed together and with each
21 other to violate, prior to May 1, 1971" -- and then there is
22 a list of statutory provisions with number, which I won't
23 read.

24 "2. It was part of said conspiracy that prior
25 to May 1, 1971, the said defendants unlawfully, wilfully,

2 knowingly and fraudulently would import and bring into the
3 United States large amounts of narcotic drugs from and
4 through France, Mexico and other countries to the grand jury
5 unknown, in violation of sections 173 and 174 of Title 21,"
6 and so forth, other statutory numbers.

7 "3. It was further a part of said conspiracy
8 that prior to May 1, 1971, the said defendants unlawfully,
9 wilfully and knowingly would receive, conceal, buy, sell,
10 and facilitate the transportation, concealment and sale of
11 a quantity of narcotic drugs, the exact amount and nature
12 thereof being to the grand jury unknown, after the said
13 narcotic drugs had been imported and brought into the
14 United States contrary to law, knowing that the said
15 narcotic drugs had been imported and brought into the
16 United States contrary to law in violation of sections 173
17 and 174," and so forth.

18 You see, as I described to you, paragraphs 2 and
19 3 formally charge under the old law in the precise language
20 of the old law.

21 Paragraphs 4 and 5 make the formal charges, as I
22 told you, under the new law. But again if you read through
23 the language the essence is the same.

24 "4. It was further a part of said conspiracy
25 that on and after May 1, 1971, the said defendants unlawfully,

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1 wilfully and knowingly would import into the United States
2 from a place outside thereof Schedules I and II narcotic
3 drug controlled substances, the exact amount thereof being
4 to the grand jury unknown," in violation of certain
5 sections.
6

7 "5. It was further a part of said conspiracy
8 that on and after May 1, 1971, the said defendants unlaw-
9 fully, wilfully and knowingly would distribute and possess
10 with intent to distribute Schedule I and II narcotic drug
11 controlled substances, the exact amount thereof being to the
12 grand jury unknown," and so forth, with the section numbers.

13 "6. It was further a part of said conspiracy that
14 the said defendants unlawfully, wilfully, knowingly and
15 intentionally would use a communication facility, to wit,
16 the telephone, in committing and in causing and facilitating
17 the commission of said conspiracy," in violation of certain
18 statute numbers.

19 Now I want to summarize and state to you the
20 elements which you must find proven as against each defendant
21 or any defendant in order to convict that defendant.

22 In order to convict a defendant on Count 1, the
23 conspiracy count, the Government must prove beyond a
24 reasonable doubt each of the following essential elements:
25 first, that for some period between November 1, 1968, and

2 the filing of the indictment on October 29, 1973, for some
3 period during that time, there was in existence a conspiracy
4 between some two or more of the defendants or other alleged
5 co-conspirators to import heroin or cocaine into the United
6 States unlawfully, wilfully and knowingly, and to sell or
7 distribute such imported narcotics in the United States,
8 knowing the same to have been illegally imported into the
9 United States.

10 In other words, the first element is basically
11 you must find the existence of such a conspiracy between two
12 or more of the defendants or alleged co-conspirators, some
13 two or more.

14 Second, you must find as to the particular
15 defendant you are considering that he knowingly and wilfully
16 joined or associated himself with the conspiracy. You see
17 the distinction between the first and second elements.
18 Under the first element you must find proven beyond a
19 reasonable doubt the existence of a conspiracy among some
20 of the persons involved; second, you must find as to any
21 defendant, in order to convict him, that he joined or
22 associated himself knowingly and wilfully with that
23 conspiracy.

24 The third element and the final element which
25 must be proven is that at least one of the conspirators -- at

2 least one of the conspirators -- committed at least one of
3 the so-called overt acts set forth in the indictment, and
4 committed that for the purpose of furthering the conspiracy

5 I did not read to you yet the list of overt acts
6 I will come to that later. But I want to just say at this
7 point briefly what I mean by overt acts.

8 Under our law it is not sufficient on a conspirac
9 charge that an agreement is proved if no physical action is
10 taken to carry out some part of the conspiratorial agree-
11 ment. Some action must be taken. And it is called an overt
12 act because it is something done in the open, not a complete
13 ly concealed act.

14 Now let us go back to the three elements and take
15 them up in order. As to the first element which must be
16 proved by the Government -- that the alleged conspiracy
17 existed -- it is necessary to understand the meaning of the
18 concept of conspiracy. A conspiracy can be defined as a
19 combination or agreement of two or more persons to accomplish
20 a criminal and unlawful purpose by concerted action. There
21 have to be at least two people involved. You cannot conspire
22 with yourself. A conspiracy is in essence a partnership in
23 crime. The gist of the offense is the combination or agree-
24 ment to violate a law.

25 To establish a conspiracy, the Government is not

1 required to show that persons sat around a table and entered
2 into any formal agreement stating that they have formed a
3 conspiracy or stating the details of the plan or the means
4 for carrying out the plan. Common sense will tell you that
5 when persons in fact undertake to enter into a criminal
6 conspiracy, a great deal is left to the unexpressed under-
7 standing.
8

9 What the evidence must show in order to establish
10 that a conspiracy existed is that two or more persons in
11 some way or manner, through any contrivance, expressly or
12 impliedly, came to a common understanding to violate the law
13 or to accomplish an unlawful plan. In determining whether
14 or not there was an unlawful agreement, you may judge the
15 acts and conduct -- my emphasis is on acts and conduct -- of
16 the alleged co-conspirators, which were done to carry out
17 an apparent criminal purpose. The adage "Actions speak
18 louder than words" is applicable here.

19 Usually the only evidence available is that of
20 disconnected acts and conduct on the part of the alleged
21 conspirators. It is necessary to consider the items of
22 evidence not in isolation but to consider them together in
23 connection with each other, to consider the evidence as a
24 whole, in order to determine whether the existence of a
25 conspiracy has been proven beyond a reasonable doubt.

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In order for a conspiracy to exist, it is not necessary that all the conspirators know each other, nor is it necessary for all the conspirators to know all the details of the conspiracy. Each member of the conspiracy may perform separate and distinct functions at different times and at different places. Some conspirators may play major roles while others may play minor roles.

As to the duration of the conspiracy, the indictment charges that the conspiracy existed from on or about the 1st day of November, 1968, and continuously thereafter up to and including the date of the filing of the indictment, which, as I said, was October 26, 1973.

It is not necessary for the Government to prove that the conspiracy lasted during this entire time. It is sufficient if you find that in fact a conspiracy was formed and existed for some period of time within the dates described in the indictment.

A conspiracy, once formed, is presumed to continue until its objectives are accomplished or there is an affirmative act of termination by its members. A conspiracy is not ended as long as the evidence shows an intention to continue it.

Some members of a conspiracy may terminate their connection with the conspiracy without ending the entire

Now let me come to the question of membership in the conspiracy. If you find that the conspiracy as charged in the indictment did exist, you must focus your attention

1 next and separately on each defendant, as I said and as I
2 will repeat, to determine whether he knowingly and wilfully
3 became a member of the conspiracy. I emphasize that this
4 question of membership is an individual one to be separately
5 considered for each defendant. To find that a defendant was
6 a member of the conspiracy, you must be satisfied beyond a
7 reasonable doubt that the defendant knew of the unlawful
8 purpose of the conspiracy and that he was a willing
9 participant in it.
10

11 To be specific, in order to convict any defendant
12 here, you must find beyond a reasonable doubt that he knew
13 that the purpose of the conspiracy was to illegally import
14 heroin or cocaine into the United States and to illegally
15 sell such imported heroin or cocaine, knowing the same to
16 have been illegally imported into the United States.

17 That is a big mouthful. Let me say it again. In
18 order to convict any defendant here, you must find beyond
19 a reasonable doubt that he knew that the purpose of the
20 conspiracy was to illegally import heroin or cocaine into the
21 United States and to illegally sell such imported drugs in
22 the United States once here, and that he must know that the
23 same has been illegally imported.

24 So your basic elements are: He must know of the
25 conspiracy to illegally import; he must know of the

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2 conspiracy in its aspect of illegally selling and distribut-
3 ing once the drugs are here.

4 In addition to the element of knowing, which was
5 really the element I emphasized just now, you must find
6 that he knowingly and wilfully participated -- participated --
7 in the scheme. As I have already indicated, it is not
8 necessary that a defendant be fully informed as to all the
9 details or the full scope of the conspiracy, and he does not
10 need to know all the other conspirators.

11 Again, each member of the conspiracy may perform
12 separate and distinct functions, at different times, some
13 with major roles, some with minor roles.

14 So the guilt of a conspirator is not governed by
15 the extent, the duration, or the magnitude of his role in
16 the conspiracy. Even if one joined the conspiracy after it
17 was formed, and was engaged in it to a degree more limited
18 than that of other co-conspirators, he is equally culpable
19 as long as he was in fact a conspirator.

20 Stand up and stretch for a minute.

21 I think I covered this before the break, but
22 let me say it again. Even if one joined the conspiracy
23 after it was formed and was engaged in it to a degree more
24 limited than that of other co-conspirators, he is equally
25 culpable as long as he was in fact a conspirator. In other

1 words, it is not required that a person be a member of the
2 conspiracy from its very start. He may join at any point
3 during its progress and be held responsible for all that
4 has been done before he joined and all that is done there-
5 after while he is a member of the conspiracy.
6

7 One way of stating it is to use the analogy of
8 a partnership. By becoming a partner or a conspirator, he
9 assumes all the liabilities of the partnership, including
10 those that were created before he became a member.

11 Once a person is found to be a member of a
12 conspiracy, he is presumed to continue his membership until
13 the termination of the conspiracy, unless there is some
14 affirmative proof of his withdrawal or his disassociation.

15 Whether a defendant knowingly and wilfully
16 participated in the claimed conspiracy presents an issue
17 relating to the particular defendant's state of mind, the
18 element of knowingness and wilfulness. Rarely is there any
19 direct evidence of a person's state of mind, particularly
20 criminal intent. We cannot go back and look into a
21 defendant's state of mind. But a person's intent and
22 knowledge may be determined from his acts and conduct, his
23 declarations, and all the surrounding circumstances. If you
24 find circumstances of secrecy, intrigue, the use of codes or
25 fictitious names, the use of covers to mask the true nature

1 of activities or transactions, these may be considered by
2 you as circumstantial evidence of criminal intent or guilty
3 knowledge.
4

5 I want to caution you that mere association,
6 mere association without anything else, of a defendant with
7 one or more conspirators does not make one a member of the
8 conspiracy. Mere association with one or more conspirators
9 does not make one a member of the conspiracy. Nor is know-
10 ledge without participation sufficient. What is necessary
11 is that the defendant participate with knowledge of at least
12 some of the purposes of the conspiracy and with the intent
13 to aid in the accomplishment of its unlawful ends.
14

15 In this connection I wish to give you a specific
16 instruction regarding the defendant Baeza. Generally in this
17 case the questions about whether a defendant was a member
18 of the conspiracy and, if so, for how long are questions to
19 be resolved solely by you, the jury. The question of
20 whether Baeza joined the conspiracy is for you to decide.
21 The testimony of Perez is that Baeza participated in the
22 conspiracy from the summer of 1968 to about October or
23 November 1969. Whether Baeza in fact did this is a question
24 for you to determine. But the point I wish to make now is
25 this: If you credit the testimony of Perez on this point,
then this testimony also includes the evidence that in

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2 October or November 1969 Ortega decided to cease employing
3 Baeza in the heroin transactions. Moreover, Baeza is not
4 even referred to with respect to any transactions after
5 November 1969.

6 I am instructing you now that if you find Baeza
7 to have been a member of the conspiracy -- and I repeat that
8 this is a question for you to decide -- but if you do find
9 Baeza to be a member of the conspiracy, you can do so only
10 with respect to the period before November 1969. This would
11 still mean that Baeza could be guilty under Count 1, but the
12 import of what I am telling you is to make clear the
13 limitations on the evidence which can be considered against
14 Baeza.

15 You cannot consider against Baeza any of the
16 acts or transactions occurring after November 1969. For
17 instance, you cannot consider against Baeza the Jaguar
18 transaction involving the shipment of heroin arriving in
19 New York in September 1971. You cannot consider against
20 Baeza any of the evidence about that transaction, including
21 the heroin that was introduced into evidence regarding that
22 transaction.

23 Let me also here give you a specific instruction
24 applicable to the defendant Uziel. The first testimony
25 about Uziel is Perez's statement that Uziel came to Perez's

2 office in September 1970 with Ortega, the Battle brothers,
3 and a man named Calli. The question of whether Uziel
4 actually joined the conspiracy is one for you to determine.
5 According to the law I have just given you a few moments ago,
6 if you do find that Uziel did join the conspiracy, he is
7 responsible for acts in the course of the conspiracy which
8 took place even before he joined it. But the point I wish to
9 make now is that in determining the question of whether or
10 not Uziel joined the conspiracy -- I emphasize and repeat --
11 in determining the question of whether or not Uziel joined
12 the conspiracy, you should only look to the evidence
13 specifically relating to Uziel, that is, the evidence about
14 the events involving Uziel commencing September 1970. On the
15 question of whether Uziel joined the conspiracy, you cannot
16 of course consider evidence about transactions among other
17 people, and specifically you would not consider evidence
18 about transactions before September 1970. It is just a matter
19 of logic. You only consider as against Uziel, or as against
20 any of the other defendants, when you are considering the
21 question of whether or not they are members, the evidence
22 specifically as to them.

23 I have just given you these specific instructions
24 regarding Baeza and Uziel. As to the other defendants --
25 Rodriguez, Stanzone, and Terrell -- the evidence is not so

1 clearly delineated in point of time. But the same basic
2 considerations apply; that is, in determining the question
3 of membership in the claimed conspiracy, it is vitally
4 important that you take each defendant one at a time and
5 consider what the evidence, if any, shows as to him. You will,
6 of course, look both at the direct evidence and the circum-
7 stantial evidence bearing upon whether he was a member of the
8 conspiracy -- both the direct evidence and circumstantial
9 evidence, but the evidence bearing on him. Then, upon that
10 specific evidence, you make your determination as to whether
11 his membership in the claimed conspiracy has been established
12 beyond a reasonable doubt.

14 That finishes the second element that I
15 described to you, the element relating to the individual
16 defendants' membership.

17 I turn now to the third element. You recall the
18 third element that has to be proved and established in the
19 conspiracy count relates to what we call overt acts.

20 If you find a conspiracy of the kind alleged,
21 aimed at the kind of unlawful behavior alleged, and if you
22 find that a defendant was a member, you must still be
23 satisfied before you may convict that one or more members
24 of the conspiracy committed at least one of the overt acts
25 alleged in the indictment.

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An overt act simply means an act charged as having been committed by one of the conspirators in an effort to effect or accomplish the object or purpose of the conspiracy. An overt act is not required in itself to be a crime considered separately and apart from the conspiracy. But it must be an action taken to achieve or further the object of the conspiracy. The law requires proof of such an act, on the premise that while people might conspire and agree to do an unlawful thing, they might change their minds before anything was done to carry out the unlawful purpose. In that event it has been thought the plan or scheme, when there is no action to effect it, ought not to be condemned as criminal.

The conspiracy charge in this particular case alleges thirteen overt acts. You recall that when I was reading this count of the indictment previously I stopped before the point came when the overt acts were alleged. I would like to read them to now now. Again, don't memorize them, but I think you should have them read to you by way of introduction.

Under the heading of "Overt Acts," on the third page of this indictment, there is the allegation: "In pursuance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:" -- incidentally,

2 the Southern District of New York includes Manhattan Island
3 where we are now sitting; it also includes the Bronx.

4 "1. In or about April 1969 the defendant Jose
5 Rodriguez Baeza and co-conspirator Luis Gomez Ortega
6 delivered approximately \$240,000 to co-conspirator George
7 Warren Perez.

8 "2. In or about September 1969 defendant Jose
9 Rodriguez Baeza left New York City for Geneva, Switzerland.

10 "3. In or about March 1970 defendant Benjamin
11 Rodriguez rented a house in Belmar, New Jersey.

12 "4. In or about August 1970 defendants Antonio
13 Borrego Vidal and John Doe, also known as El Gallego, met
14 with defendant Anthony Stanzione.

15 "5. In or about November 1970 defendant Jean
16 Orsini, also known as Jean Pierre Andre Huguen" -- some
17 pronunciation like that -- "and Roch Orsini traveled from
18 New York City to New Jersey.

19 "6. On or about March 12, 1971, defendant Manuel
20 Uziel and co-conspirator George Warren Perez rented a garage
21 in Newark, New Jersey.

22 "7. In or about June 1971 defendant Benjamin
23 Rodriguez met with co-conspirator Luis Gomez Ortega.

24 "8. In or about June 1971 co-conspirator Luis
25 Gomez Ortega telephoned defendant Anthony Stanzione.

"9. On or about July 12, 1971, defendant Anthony Stanzone went to the vicinity of 1840 Loring Place, Bronx, New York.

"10. On or about July 21, 1971, co-conspirator Luis Gomez Ortega withdrew approximately \$500,000 from the First National Bank of Fort Lee, Fort Lee, New Jersey.

"11. On or about September 17, 1971, defendant Manuel Uziel went to the vicinity of 992 Amsterdam Avenue, New York, New York.

"12. On or about September 19, 1971, the co-conspirators Luis Gomez Ortega, Jean Orsini, and George Warren Perez went to the vicinity of Madison Square Garden, New York, New York.

"13. On or about September 23, 1971, defendant Antonio Borrego Vidal withdrew approximately \$500,000 from the First National Bank of Fort Lee, Fort Lee, New Jersey."

I read those thirteen overt acts to give you a concrete idea of the nature of what I am talking about. You will have the indictment before you, and you under no circumstances are required to memorize these as I read them.

The point is that the Government is not required to prove more than one of those alleged overt acts. But it must prove one beyond a reasonable doubt to establish the final element of its conspiracy charge.

This concludes my instructions on the elements of the conspiracy offense charged in Count 1. I have some more remaining instructions, but I think we should take a short recess. Again, you are not at the deliberating point, so keep avoiding discussions of the case.

(Recess)

Let me turn to the substantive count, Count 2. This is a short count, which I will read.

"The grand jury further charges:

"On or about the 19th day of September, 1971, in the Southern District of New York, Benjamin Rodriguez, Anthony Stanzione, Antonio Borrego Vidal, Manuel Uziel, Jose Rodriguez Baeza, William Sherman Terrell, Roch Orsini, and John Doe, also known as 'El Gallego,' the defendants, unlawfully, intentionally, and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 516 grams of heroin hydrochloride."

As the Government has advised you, Count 2 has been dismissed as to Baeza, because if he was a member of the conspiracy there is no evidence connecting him with the conspiracy after November 1969.

As to the other four defendants -- Rodriguez, Stanzione, Terrell, and Uziel -- the jury must decide

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whether the Government has proved the elements of Count 2 as against each of them.

In essence, Count 2 charges that each of these four defendants is guilty of distributing or possessing with intent to distribute the one-half kilogram of heroin seized with the Jaguar on September 19, 1971.

The Government does not contend, and there is no evidence, that any of these four defendants physically possessed that half kilo of heroin.

I have referred to the half kilo of heroin seized. Let me say that, like all factual questions, it is a question of fact for you to determine if the evidence proves the half kilo of heroin on the Jaguar, and so forth. But for the purposes of my discussion on the count, and to try to put the thing in perspective for you, I am going to speak of this. But it still is a fact to be determined by you whether the half kilo was brought in and whether the evidence shows that or does not. All the factual issues are for you.

Going back: The Government does not contend that these four defendants or any of them physically possessed this claimed half kilo of heroin. Rather, the Government contends that each of these defendants charged in Count 2 is guilty, because there was a criminal act

2 committed by co-conspirators in furtherance of and during
3 the course of the unlawful conspiracy of which he was a
4 member. The Government contends that Ortega, Perez and
5 Orsini actually had the half kilo of heroin on September 19,
6 1971, in furtherance of the conspiracy.

7 I think this will be a little clearer if you
8 look back to a rule of law I gave you in describing the
9 conspiracy count. You recall that I likened it to a
10 partnership, and I told you that, as in a partnership, a
11 person who joins the partnership or joins the conspiracy
12 becomes liable for the acts of the other partners or the
13 other co-conspirators. That is really the basis, that rule
14 of law is what the Government is basing Count 2 on.

15 The Government contends that three of the co-
16 conspirators -- Orsini, Perez, and Ortega -- had the half
17 kilo of heroin in their possession on September 19, 1971,
18 and they held this heroin with the intent to distribute it
19 in furtherance of the conspiracy. The Government further
20 contends that these four defendants -- Rodriguez, Uziel,
21 Stanzone, and Terrell -- were members of this conspiracy
22 along with those three people who had the heroin. Finally,
23 the Government contends that, by virtue of their membership
24 in the conspiracy, these defendants are liable for the
25 illegal act of the co-conspirators.

Again, the Government's theory of law is the correct law. The question is whether you as the jury find that the facts are proven.

In view of what I have told you, I will describe the elements which you must find in order to convict any or all of these four defendants on Count 2.

In order to convict a defendant on Count 2, you must find beyond a reasonable doubt: first, that Ortega, Perez, and Orsini actually possessed one-half kilo of heroin on September 19, 1971, and they possessed it with intent to distribute, that is, transfer to others; second, that these three persons -- Ortega, Perez, and Orsini -- in having this heroin, were acting in furtherance of the conspiracy; third, taking each of the four defendants one at a time, that he was a member of the conspiracy as of September 19, 1971.

You can see from my instructions just given to you that your verdict on Count 2 is in many respects dependent on what conclusion you reach with regard to Count 1. In other words, you can only find a defendant guilty in Count 2 if you have found he was guilty of being a member of the conspiracy charged in Count 1. Count 2 really flows from Count 1.

So if, as to any defendant, you acquit him on Count 1, you don't even reach Count 2 and you necessarily

acquit him on Count 2.

But if, as to any defendant, you find him guilty on Count 1, the conspiracy count, you will then go on and consider specifically the elements of Count 2, that is, whether he was a member of the conspiracy on the particular date in question and whether there was a criminal possession of heroin by Ortega, Perez, and Orsini in furtherance of that conspiracy.

That concludes my instructions to you about Count 2, and I would like now to give you some final instructions of a somewhat general nature.

As I said at the beginning of the charge, you as jurors are the finders of the facts. You are to decide what weight is to be given to the evidence and you are to decide on the credibility of the witnesses. How do you evaluate the credibility of the witnesses? In the first place, you bring into the courtroom with you your everyday common sense, your good judgment, and your experience. You will bring these to bear when you evaluate the witnesses and their credibility.

You have, of course, heard the witnesses on the stand, and you have observed their manner of testifying. You will consider your basic impression as to whether or not each witness was telling the truth, was giving you an

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accurate version of what occurred, or was doing otherwise.

In arriving at your basic impression of whether a witness was or was not telling you the facts, it is well to keep in mind that witnesses are human beings from a variety of walks of life and backgrounds. The ultimate question is not whether you have a personal like or dislike or a personal respect or disrespect for the witness as a man or a woman. The final question as to each witness is whether, in view of all the circumstances, you believe that the witness has told you facts which you can rely on and which contribute to your knowledge of the overall factual picture in this case.

It is up to you as the jury to determine whether any of a witness' testimony is accurate and believable, whether all of it is or whether none of it is. It is up to you in your good judgment and your sound common sense.

In the first place, I won't attempt to even indicate all the considerations that you should go through in evaluating a witness' testimony. I will try to outline a few of them. They may not strike you as appropriate in a given instance, they may strike you as appropriate; there may be others and many others that strike you as appropriate to consider that I don't mention. Again, this is really your task, and it is up to you to use your judgment on how

to evaluate the credibility of witnesses.

However, one consideration that is usually thought to be most appropriate to consider with respect to the testimony of any witness on a particular fact is whether that testimony is basically probable and likely or basically improbable and unlikely. You can consider it in respect to probability or improbability on its own, and also you should consider it in the light of all the evidence taken together.

For instance, you recall the testimony of Perez that Baeza, Rodriguez, Stanzione, and Uziel were involved in certain ways with Ortega and Perez in planned or actual narcotics transactions. You recall the testimony of Joan Moreland and Lynn Chatman that Stanzione dealt with Moreland in narcotics. You recall that these defendants contend that their association with Ortega or Perez or Moreland, as the case may be, was for an innocent or legitimate reason. You have heard the specific testimony and you have heard the attorneys' summations and I won't repeat them. But the point is that you are entitled to consider which version on any given point is basically probable or improbable.

In judging the credibility of a witness, as I think I said earlier, you should really consider his or her testimony not in isolation but in relation to all the other related evidence, and ask yourself whether the testimony of

that witness or the part of the testimony you are considering jibes with other evidence. Is the testimony supported or backed up or otherwise? You may find that the testimony of a witness is specifically corroborated by other evidence which you believe.

One question which you may want to consider is whether, if you find such corroboration of some testimony of a witness, that corroboration furnishes enough assurance regarding that witness for you to believe other parts of his testimony.

Another factor to be considered in weighing the credibility of a witness is inconsistencies. To what extent were there inconsistencies within a witness' testimony here in court? To what extent was the witness' testimony in court inconsistent with statements made on prior occasions? If there were inconsistencies of either kind, how important were they? Were they such as to cause you to disbelieve the witness' testimony in whole or in part, or are there explanations which you credit, which indicate that the inconsistencies or the claimed inconsistencies are satisfactorily explained or not important enough for you to discredit the essential parts of the witness' testimony.

Another factor to be considered is whether you believe a witness has such a bias or prejudice or interest in

the outcome of the case, or any other motive, to cause him or her to testify falsely.

A witness may be inaccurate, contradictory or even untruthful in some respects and yet be entirely credible in some essential and material facts of his testimony. It is for you, as I think I have already indicated, to determine whether a witness at this trial has testified truthfully in whole or in part.

Two of the principal witnesses for the Government in this case, Perez and Moreland, were participants in the alleged conspiracy. Perez is serving a prison term as a result of being convicted in the federal court on the Jaguar transaction. Moreland is serving a prison term as a result of a narcotics conviction in the state court. In the prosecution of crime the Government of necessity is frequently compelled to rely upon the testimony of accomplices or persons with criminal records. Often it has no choice in the matter. The Government must take the witnesses to the transactions as they are. If accomplices could not be used, in many instances it would be difficult to detect and prosecute wrongdoers. This is particularly true in conspiracy cases.

Frequently it happens that only members of a conspiracy have evidence that is relevant to and important

2 in a case if a prosecution is to succeed.

3 There is no requirement in the federal courts
4 that the testimony of an accomplice be corroborated. A
5 conviction may rest upon the uncorroborated testimony of
6 an accomplice if you find it credible and believable.
7 Parenthetically, however, it should be pointed out that the
8 Government here does claim corroboration as to various
9 portions of the testimony of Perez and Moreland by independent
10 proof from other witnesses not accomplices and also from
11 documentary evidence.

12 The fact that Perez and Moreland are accomplices
13 with prior criminal records may be considered by you as
14 bearing upon their credibility. However, it does not
15 follow that because a person has acknowledged participation
16 in a crime or is an accomplice that he is not capable of
17 giving a truthful version of what occurred. His testimony,
18 however, should be viewed with great caution and scrutinized
19 carefully.

20 Did Perez, or Moreland, or both, color his or her
21 testimony or give false testimony because of a hope of
22 obtaining reduction of sentence or because of a hostility
23 toward any defendant? If so, the testimony should be
24 rejected. On the other hand, if upon a cautious and careful
25 examination of the testimony of Perez and Moreland, including

1 consideration of their demeanor on the witness stand and
2 a consideration of the extent of any corroboration, you are
3 satisfied that either or both of these witnesses have given
4 a truthful version as to certain facts, there is no reason
5 why you should not accept that testimony as credible and
6 act accordingly.
7

8 One other element I should advise you is this:
9 The fact that a number of Government witnesses were law
10 enforcement officers of the United States Government or of
11 a local governmental body does not entitle their testimony
12 to any greater weight or consideration than that afforded
13 to any other witness in the case. Their credibility is to be
14 determined and judged by you just the same and on the same
15 basis as any other witness. They are not entitled to any
16 more credence or weight. By the same token, they are not
17 entitled to any less consideration.

18 One further point relates to the fact that
19 the defendant Uziel took the witness stand. Uziel was not
20 required to take the witness stand, but once he has, his
21 credibility must be determined by you. Obviously, he has a
22 deep personal interest in the result of this prosecution.
23 Indeed, it is fair to say he has the greatest stake in its
24 outcome as far as he is concerned. Interest creates a motive
25 for false testimony. The greater the interest, the stronger

1 the motive. A defendant's interest in the result of his
2 trial is of a character possessed by no other witness. In
3 appraising the credibility of the defendant Uziel as a
4 witness, you may take these facts into consideration.
5

6 However, it by no means follows that simply
7 because a person has a vital interest in the end result of
8 a case he is not capable of telling a truthful, candid and
9 straightforward story. It is for you to decide to what
10 extent, if at all, his interest has affected or colored his
11 testimony.

12 The defendants other than Uziel have not testified
13 in this case. This is the absolute constitutional right of
14 each one, and in no way or respect may this be considered
15 by you as evidence against him or as a basis for any
16 presumption or inference unfavorable to him.

17 You must not permit the fact that each of the
18 other three defendants did not testify -- you must not permit
19 that fact -- to weigh in the slightest degree against him,
20 nor should it even enter into your deliberations or
21 discussions.

22 You have heard testimony about statements made
23 by Terrell to law enforcement officers following his arrest
24 on a prior charge. You have heard testimony about statements
25 made by Uziel following his arrest in this case. You will

weigh that testimony, just as you weigh any other testimony, and give it what weight or significance you believe it logically and reasonably should be given.

There is no legal prohibition or limitation on your consideration of this evidence, except, as I told you earlier, evidence about statements made by Uziel after his arrest cannot be used with respect to any other defendant. They can only be used as to Uziel. Statements made by Terrell after his arrest on the prior charge cannot be used against any other defendant and can only be used as to Terrell.

I hope I have used the names correctly, talking about Uziel and Terrell, and the point is that those post-arrest statements can only be used as against the specific defendant who made them, if you believe they were made.

In the course of Mr. Taikeff's summation and in the course of the Government's summation there was, as you will recall, reference to the testimony about statements made by Mr. Terrell after his arrest on the prior charge. I want to make crystal-clear and clear up any possible confusion, so I am instructing you -- and if I am repeating, please bear with me -- that as far as the record before you is concerned there was no reference to any other defendant in those statements or those interviews involving Mr.

2 Terrell and the post-arrest situation. You may not in any
3 way consider those statements or interviews with respect to
4 any other defendant besides Terrell.

5 If a potential witness could have been called
6 by the Government or by the defendants, and neither side
7 called him, then you may infer that the testimony of the
8 absent witness might have been unfavorable either to the
9 Government or to the defendant or to both of them. But, on
10 the other hand, it is equally within your province to draw
11 no inference at all from the failure of either side to call
12 a witness.

13 You should bear in mind that there is no duty
14 upon either side to call a witness whose testimony would be
15 merely cumulative of testimony already in evidence.

16 You will recall that in this case there was
17 reference to Mr. Terrell being convicted on a prior narcotics
18 charge. I want to instruct you that you cannot consider
19 the existence of or the conviction on that prior charge as
20 evidence that Mr. Terrell committed the crime alleged in
21 this indictment. In other words, the case against Mr.
22 Terrell stands or falls as to the evidence in this case
23 relating to this alleged crime, and you cannot carry over
24 against him any inference from the fact he was convicted on
25 another crime.

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2 If you fail to find beyond a reasonable doubt
3 that the law has been violated or if you fail to find beyond
4 a reasonable doubt that any or all of the defendants have
5 committed the offenses charged in this indictment, then you
6 should not hesitate for any reason to find a verdict of
7 acquittal as to such unproved charge. But, on the other
8 hand, if you should find that the law has been violated as
9 charged, as to any or all of the defendants, as to either
10 or both counts, you should of course not hesitate because of
11 sympathy or any other reason to render a verdict of guilty.

12 Under your oath as jurors, you cannot allow a
13 consideration of the punishment which may be inflicted upon
14 a defendant if convicted to influence your verdict in any
15 way or in any sense to enter into your deliberations. The
16 duty of imposing sentence rests exclusively upon the Court.
17 Your function is to weigh the evidence in the case and to
18 determine the guilt or innocence of the defendants solely
19 upon the basis of such evidence and the law.

20 Ladies and gentlemen, when you proceed to your
21 deliberations, please have in mind that each of you is
22 entitled to your own sincere good judgment. At the same
23 time it is expected that you will exchange views with your
24 fellow jurors. This obviously is the essential purpose of
25 jury deliberation: to discuss and consider the evidence

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1 together and listen to the arguments of your fellow jurors.
2 This means, of course, that you will present your own point
3 of view as well as listening to and considering other points
4 of view.
5

6 Any verdict must be the unanimous verdict of all
7 of you. While the objective is to reach a verdict if you
8 can, and while you must be unanimous to render a verdict,
9 each individual juror must cast his vote in good conscience,
10 based on his own ultimate judgment, after considering all
11 points of view and testing his own beliefs against those of
12 his colleagues.

13 If you find during your deliberations that you
14 have need to hear any of the testimony read back, you may
15 send a note to the Court through your foreman. Your foreman
16 can make out a note stating your request. There will be
17 two marshals outside the jury room, and any request or needs
18 that you have to convey can be conveyed by your foreman
19 through those marshals.

20 If you find that anything I have said in these
21 instructions requires clarification, again send out a note,
22 and an attempt will be made to give you what you need. If
23 you need to see any of the exhibits in evidence, indicate
24 that need and we will attend to it.

25 Juror No. 1 will be your foreman, unless she

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declines to serve, and then you will elect another one of your members as your foreman.

Again, any verdict you render must be the unanimous verdict of all of you, and the verdict should be rendered orally in open court.

When you are ready to announce a verdict, your foreman will send me a note stating that you are ready with your verdict. But please do not put the verdict on the note. The verdict should be announced by your foreman in open court orally.

You will need to render a verdict of guilty or not guilty as to each of the defendants Rodriguez, Stanzone, Baeza, Uziel, and Terrell, as to Count 1. You need to reach a verdict as to each of the five defendants of not guilty or guilty as to Count 1.

As I said before, as to any defendant acquitted on Count 1, he is automatically acquitted on Count 2. As to any defendant held guilty on Count 1, you must go ahead and decide the elements of Count 2, and then render your verdict.

As to Count 2, only four of the defendants are now subject to that charge. Baeza is not. Remember that: Baeza is not. So, as to Count 2, you will hand down or you will render a general verdict of guilty or not guilty

2 as to each of the defendants Rodriguez, Stanzione, Uziel,
3 and Terrell.

4 It is necessary at this point for me to take a
5 minute to consult with the lawyers to see if they have any
6 corrections or additions which should be made to my charge.
7 Since this may take five minutes or so, I think I will let
8 you go back to the jury room. But, again, we are still not
9 at the stage when you are deliberating, so continue to abide
10 by my instructions and forbear discussing the case among
11 yourselves. We will be back with you just as soon as we
12 possibly can.

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What I think needs to be cleared up is this: When it comes to reaching a verdict, you are not simply concerned with finding which overall version is more probable, a kind of balancing test. What I have told you does not take away one whit the standard of proof that I outlined to you. When it comes to evaluating the overall case of the Government against any defendant, you still must determine that the Government has proved its case beyond a reasonable doubt. That is, was, and remains the standard of

proof. What I am telling you now probably hardly needs to be said and is probably redundant, but in case there was any confusion created by my instruction on credibility I want to erase it.

I don't think I will get into repeating any of the charge. I think I have said enough as is on that subject. Obviously, what I say now you should take into account in light of all the charges and instructions I gave you before the recess. No one part of the charge, whether I give it now or whether I said it before the recess, is any less important than any other part of the charge.

I would like to have the marshals sworn.

(Two marshals were sworn.)

THE COURT: Ladies and gentlemen, you may now retire to deliberate. As I said before, the facilities of the Court are available to you. You can, as far as meals are concerned, have them brought in or you can go out. Just let us know.

I asked you last night to be prepared for an overnight stay just as a contingency. The only thing I want to say now is: As the day draws to a close, it is really up to you how long you want to deliberate today, when you want a recess. If you want a recess before dinner, to come back tomorrow, you can. If you want to eat dinner and deliberate

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tonight, it is up to you.

On the question of whether you should go home or whether you should stay at a hotel for the night, this is a matter that I would want to hear your desires on before any decision is made. So I don't think we need to cross that bridge at the moment. But when and if we have to cross it, I certainly want to hear your desires on the matter.

I almost forgot one essential point. I would like to say to the alternate that the time has come when we must excuse you. You certainly have our thanks. It goes without saying that you have been a very important insurance policy. If anything had happened to any one of these jurors during the course of the trial, all the work would have been for naught. Thank you very much. You are now excused.

ALTERNATE JUROR NO. 1: Thank you, your Honor.

(Alternate Juror No. 1 left the jury box.)

(At 1:05 p.m. the jury retired to deliberate.)